

Senator William Stouffer, Chairman
Senator Joseph Keaveny
Steve Reintjes, MD
John Stanley, MD
David Carpenter



Representative Robert Schaaf, MD
Representative Curt Dougherty
Lancer Gates, DO
Gloria Solis, RN, MSN, MBA
John M. Huff, Director, DIFP

Health Care Stabilization Fund Feasibility Board

Minutes for the March 11, 2010 Meeting

Board Members Participating:

Senator Stouffer
Senator Keaveny (via telephone)
Representative Dougherty
Representative Schaaf
Dr. Reintjes
Dr. Gates
Dr. Stanley
Golia Solis (via telephone)
David Carpenter

Also in attendance:

Brent Kabler, DIFP
Mark Doerner, DIFP
Tamara Kopp, DIFP (via telephone)
David Cox, DIFP (via telephone)
Mike Delaney, Hospital Services Group (via telephone)
Jeanie Botkin of Polsinelli Shughart, representing MPM (via telephone)

Sen. Stouffer called the meeting to order at approximately 12:30 p.m. He called for the approval of the minutes of the prior meeting, which motion was seconded and approved. He then called for approved of a report on the Board's activities in 2009, which was seconded and approved.

Next, Brent Kabler and Mark Doerner of the Department of Insurance, Financial Institutions and Professional Registration (DIFP) updated the members on the status of the Board's data call. As of March 11, roughly 1/3 of the market (in terms of premium dollars) had responded and another 1/3 had asked for extensions. A third group of carriers had been asked to be exempted from the data call altogether. DIFP staff indicated that they had had teleconferences with all of the carriers who had requested extensions and had granted them where they seemed to be based on legitimate reasons, the most common of which was that the original filing deadline of February 28, 2010

conflicted with a National Association of Insurance Commissioners (NAIC) financial reporting deadline.

Next, the Board discussed the concerns of the Missouri Hospital Plan (MHP) regarding the usefulness of its data and about whether the data would be confidential. DIFP staff explained that there were two logistical problems with MPH; first, that its “exposure” information was not captured in the same manner as other insurers and second, that they would likely be the only entity reporting hospital-specific information. These problems meant that it would be hard to merge their data with other insurers and that, under the confidentiality constraints of the data call, DIFP might not be able to aggregate the information and report it. On a motion from the Board, the DIFP was directed to work with MPH to collect whatever data it had available and to ensure its confidentiality. If the data cannot be aggregated with that of other insurers to protect its confidentiality, the DIFP may nevertheless be able to gather some insights on the market from it.

Next the DIFP discussed risk retention groups (RRGs), entities that are federally chartered to write insurance largely outside state regulatory constraints. The DIFP staff noted that at least one RRG submitted a letter indicating it did not need to comply with the data call. Legal counsel for the DIFP indicated that the DIFP’s ability to compel RRGs to report was untested. The staff also pointed out that, while growing in market share, the RRGs did not currently represent a large share of the market. Also, some RRGs have either already submitted data or were in the process of producing the data. On a motion, the Board decided not to compel RRGs that refused to comply with the data call.

Next, DIFP staff discussed the various companies that had indicated they will be unable to comply because the information is no longer readily available or is not kept in digital form. Some of the companies in the earlier period of the data call (which spans the period 1997 to 2008) had either gone insolvent, stopped writing the coverage altogether or had merged into other entities. On a motion, the Board authorized DIFP staff to exempt companies which in their judgment could not comply. Rep. Schaaf abstained from the vote.

Sen. Stouffer then excused himself to attend another function and passed the responsibility for running the meeting to Rep. Schaaf.

Next, Mark Doerner raised several issues he thought the Board would need to contemplate before making its final recommendations. The first issue was who should be included in a Missouri stabilization fund if the Board decided to recommend establishing one. While the Kansas fund that the Board has studied is generally considered to “cover all health care providers,” in fact it doesn’t cover nurses, allied healthcare providers, and others. The second issue was how to protect the “surplus” of any such fund from being accessed or swept by the Missouri General Assembly in lean budget years. Dr. Reintjes asked the staff to research that point.

The Board then discussed alternatives to recommending setting up a fund. These included clarifying DIFP’s authority to address inadequate premium rates. David Cox

indicated that the current language of the law (Section 383.206, RSMo) requiring competent and compelling evidence to challenge base rates makes it difficult for DIFP to challenge excessive, inadequate or unfairly discriminatory rates. Mr. Doerner discussed how part of the crisis in the early 2000s was brought on because of carriers entering the Missouri market, charging inadequate premiums, going insolvent and leaving holes in the market. Mike Delaney pointed out that another area of instability was the Missouri tort environment at the time, citing the *Scott* decision (70 S.W. 3rd 560) which allowed multiple caps on non-economic damages. He said that his company's actuary had indicated that the tort law revisions made in 2006 were just now becoming visible in the data. Another possible non-fund recommendation might be modifying the provisions of the state's Joint Underwriting Association (JUA) in order to allow it to write "claims-made" policies. Currently, the JUA is only authorized to write "occurrence" policies. Mr. Doerner pointed out the political hurdle that existed with legislation to set up a fund today, in a relatively stable medical malpractice environment, that being that there would likely be significant opposition from the current insurers, who would essentially have to give up half of their premium and potentially much of their profit to such a the fund.

The Board discussed when to have its next meeting. DIFP staff thought that they might be able to provide the Board with an analysis of the data from the data call sometime in July.

With that, the meeting was adjourned.